

REMARKS/ARGUMENTS

Favorable reconsideration of this application, in view of the above amendments and the following remarks, is respectfully requested.

Claims 59-74 remain pending in this application. By this amendment, Claims 59, 65, and 71 have been amended. Support for these amendments is found, by way of non-limiting example, in application FIGS. 2-8 and 11 and the corresponding specification description. Accordingly, it is respectfully submitted that no new matter has been added.

In the outstanding Final Office Action, Claims 59-62, 64-68, and 70-73 were rejected under 35 U.S.C. § 102(b) as being anticipated by Miura et al. (US 2002/0028004 A1, hereinafter “Miura”)¹; and Claims 63, 69, and 74 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Miura in view of Murakami et al. (US 6,483,929 B1, hereinafter “Murakami”).

Claims 59 and 65 recite “wherein the light source unit is set in a horizontal direction or a horizontally slanted direction with respect to the part of body and the detecting unit is set in a vertical direction or a vertical slanted direction with respect to the part of body, so that the light source unit and the detecting unit are not coaxial with one another.” Claim 71 recites “wherein the emitted light is emitted from a horizontal direction or a horizontally slanted direction with respect to the part of body and the image of the light reflected is detected in a vertical direction or a vertical slanted direction with respect to the part of body, so that the emitted light and the detected image are not coaxial with one another.” It is respectfully submitted that these features are neither disclosed by nor rendered obvious by Miura, Murakami or the combination thereof.

The Advisory Action of October 22, 2008 states “it can be seen in figure 5, numeral 4, 2, Miura discusses that the light source unit is set in horizontally slanted direction with respect

¹ This published application has subsequently issued as USP 6,993,160 B2.

to the part of body and the detecting unit is set in a vertical direction or a vertical slanted direction with respect to the part of body.” The Advisory Action further states “[a] CCD camera captures the light that is sent from the light source, passes through the finger and in doing so is scattered and reflected, and enters the sensor within the CCD camera that is able to create the vein pattern by the light that is scattered or reflected.” The Advisory Action goes on to ask “[h]ow would the Miura reference or a camera system work if it did not pick up scattered or reflected light?”

It is respectfully submitted that the outstanding Final rejection and the Advisory Action have misinterpreted and misdescribed Miura. As can be seen in FIG. 5 of Miura, the light from light sources 2 penetrates the finger and is detected by CCD cameras 4. Miura states “[a] plurality each of light sources 2 and CCD cameras 4, each with an optical filter 3, are arranged *opposite* each other in a *coaxial* form around the central axis of a finger 20 em (emphasis added).”² Miura adds “[w]hen the finger 20 is inserted into the interface 1, those imaging devices receive finger images in many directions.”³ Thus, it is respectfully submitted that it is clear from Miura that the images are picked up by CCD cameras 4 by way of light sources 2 through penetration of the finger by the light. The light is transmitted through the fingers.⁴ There is no scattering or reflection described in Miura being detected by CCD cameras 4. That is because Miura makes clear that the light sources and cameras are opposite each other in a coaxial form.

MPEP § 2131 makes clear “to anticipate a claim, the reference must teach every element of the claim.” Furthermore, MPEP § 2131.01(iii):

“[T]o serve as an anticipation when the reference is silent about the asserted inherent characteristic, such gap in the reference may be filled with recourse to extrinsic evidence. Such evidence must make clear that the missing descriptive

² Paragraph [0033].

³ Paragraph [0033].

⁴ Paragraphs [0001] and [0008].

matter is *necessarily present* in the thing described in the reference, and that it would be so recognized by persons of ordinary skill (emphasis added).” *Continental Can Co. USA v. Monsanto Co.*, 948 F.2d 1264, 1268, 20 USPQ2d 1746, 1749 (Fed. Cir. 1991).

The rejection of independent Claims 59, 65, and 71 fails to meet these standards. Rather, it is respectfully submitted that one of ordinary level of skill in the art would recognize that because light sources 2 and CCD cameras 4 are coaxial with one another as described in Miura that only light which passes through the subject finger will be detected. In other words, light that has been reflected or scattered will exit the finger in directions different from the coaxially shown arrows in Miura FIG. 5 and will not reach CCD cameras 4 from the corresponding light source 2.

Therefore, Miura fails to describe the features of Claims 59, 65, and 71 quoted above.

Murakami fails to correct the deficiencies of Miura pointed out above. In Murakami an infrared light is directed toward a specific part of a user’s body, preferably the user’s finger.⁵ In Murakami, the infrared light penetrates the skin of the finger and is absorbed or reflected off the user’s skin and subskin tissues and, specifically arterial tissues.⁶ Therefore, Murakami fails to describe the features of Claims 59, 65, and 71 quoted above.

It is respectfully submitted that dependent Claims 60-64, 66-70, 73, and 74 are patentable at least for the reasons argued above with regard to the claims from which they depend.

Accordingly, it is respectfully requested that the rejections of Claims 59-74 be reconsidered and withdrawn, and that Claims 59-74 be found allowable.

⁵ Column 6, lines 45-47.

⁶ Column 6, lines 47-49.

Consequently, for the reasons discussed in detail above, no further issues are believed to be outstanding in the present application and the present application is believed to be in condition for formal allowance. Therefore, a Notice of Allowance is earnestly solicited.

Should the Examiner deem that any further action is necessary to place this application in even better form for allowance, the Examiner is encouraged to contact the undersigned representative at the below-listed telephone number.

Respectfully submitted,

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A handwritten signature in black ink, reading "Michael L. Gellner", written over a horizontal line.

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